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EXAMINER

NGUYEN, THANH T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KULVIR SINGH BHOGAL, NIZAMUDEEN ISHMAEL, JR., and
JAVID JAMEOSSANAIE

Appeal 2009-006273
Application 10/062,328¹
Technology Center 2400

Before JAMES D. THOMAS, ST. JOHN COURTENAY III, and
JAMES R. HUGHES, *Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL²

¹ Application filed January 31, 2002. The real party in interest is International Business Machines, Corp. (Br. 3.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal from the Examiner's rejection of claims 1-18 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' Invention

The invention at issue on appeal relates to a system and method for splitting network bandwidth among multiple transactions, displaying a communication requesting a priority for a network transaction, and receiving an input indicating the priority for the network transaction. (Spec. ¶¶ [0001] [0006]-[0007].)³

Representative Claim

Independent claim 1 further illustrates the invention. It read as follows:

1. A method for splitting a bandwidth among a plurality of network transactions, said method comprising:
displaying a communication requesting a priority of a network transaction; and
receiving an input indicating the priority of the network transaction.

³ We refer to Appellants' Specification ("Spec.") (paragraph numbers refer to published application – US 2003/0145088 A1) and Appeal Brief ("Br.") filed August 21, 2006. We also refer to the Examiner's Answer ("Ans.") mailed May 1, 2008.

Reference

The Examiner relies on the following reference as evidence of unpatentability:

Joseph	US 6,628,615 B1	Sep. 30, 2003
		(filed Jan. 18, 2000)

Rejection on Appeal

The Examiner rejects claims 1-18 under 35 U.S.C. § 102(e) as being anticipated by Joseph.

ISSUE

Based on our review of the administrative record, Appellants' contentions, and the Examiner's findings and conclusions, the pivotal issue before us is as follows:

Does the Examiner err in finding Joseph discloses displaying a communication requesting a priority of a network transaction?

FINDINGS OF FACT (FF)

Appellants' Specification

1. Appellants' Specification describes displaying a bandwidth priority communication (BPC) in a graphical user interface. (Spec. ¶ [0029].)

Joseph Reference

2. Joseph describes a system and method for communicating messages between nodes of a communications network. Joseph further describes a device for receiving message packets, dividing a network channel (virtual channel) into two channels – a latency sensitive channel and

a bandwidth sensitive channel, generating flits associated with the received messages, and transmitting the flits on the two channels. Each message has an associated priority. Joseph's system/method determines the priority and routes the flits accordingly. (Abstract; col. 3, ll. 32-55; col. 7, ll. 1-33.)

3. A thorough review of Joseph's disclosure indicates that Joseph does not mention or describe displaying any form of communication, nor the priority of any network transaction.

ANALYSIS

Appellants have the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). The Examiner sets forth a detailed explanation of a reasoned conclusion of anticipation in the Examiner's Answer with respect to Appellants' representative independent claim 1. (Ans. 3, 6-7.) Therefore, we look to the Appellants' Brief to show error in the proffered reasoned conclusions. *See Kahn*, 441 F.3d at 985-86.

Arguments Concerning the Examiner's Rejection of Representative Claim 1 under 35 U.S.C. § 102(e)

The Examiner rejects Appellants' independent claim 1 as being anticipated by Joseph. (Ans. 3.) The Examiner finds that Joseph discloses a method for splitting bandwidth and receiving an input indicating the priority of a network message. (Ans. 3.) The Examiner also finds that Joseph discloses displaying a communication requesting a priority of a network transaction. (Ans. 3, 6 (citing Joseph col. 7, ll. 1-20).) Appellants contend, *inter alia*, that Joseph "fails to show 'displaying a communication requesting

a priority of a network transaction”” (Br. 14) as recited in claim 1 because Joseph’s “transport agent 200 does not display a communication requesting a priority of an incoming message 220” (Br. 12).

Based on the record before us, we find error in the Examiner’s anticipation rejection of Appellants’ claim 1. We agree with Appellants that Joseph does not disclose the disputed feature of “displaying a communication requesting a priority of a network transaction” for the reasons espoused by Appellants.

As detailed in the Findings of Fact section *supra*, Appellants’ Specification describes displaying a bandwidth priority communication (FF 1), which supports the disputed limitation. Accordingly, we find that Appellants’ claim requires displaying a communication that includes (requests) a network transaction priority. Appellants correctly identify that Joseph does not disclose displaying any information, much less displaying network communications, and therefore does not disclose requesting the priority of a network transaction in a displayed communication. (Br. 12.) Although we agree with the Examiner that Joseph discloses a method for splitting bandwidth (splitting virtual channels) and receiving an input indicating the priority of a network message (FF 2), we disagree with the Examiner that Joseph discloses any mention of displaying information. We agree with Appellants that Joseph does not even mention displaying network communications (messages), much less a communication requesting a priority of a network transaction. (FF 3.)

Consequently, we are constrained by the limits of the evidence before us to find that Joseph does not disclose the disputed feature of “displaying a communication requesting a priority of a network transaction.” The

Examiner has failed to set forth a prima facie anticipation rejection. Thus, Appellants have persuaded us of reversible error in the Examiner's anticipation rejection of Appellants' independent claim 1.

Appellants' independent claims 7 and 13 include the identical disputed claim limitation. Appellants' dependent claims 2-6 depend on claim 1, Appellants' dependent claims 8-12 depend on claim 7, and Appellants' dependent claims 14-18 depend on claim 13. Therefore, based on the record before us, we find that the Examiner erred in finding Joseph discloses each limitation recited in Appellants' claims 1-18. Accordingly, we reverse the Examiner's anticipation rejection of these claims.

CONCLUSION OF LAW

Appellants have shown that the Examiner erred in rejecting claims 1-18 under 35 U.S.C. § 102(e).

DECISION

We reverse the Examiner's rejection of claims 1-18 under 35 U.S.C. § 102(e).

REVERSED

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Application 10/062,328

msc

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